

**III. Reconciliation, Reparations and  
Restitution: What Does Pub. L. 103-150  
Mean? By Trustee Mililani Trask**

**Reconciliation, Reparations and Restitution:**  
**What Does Pub. L. 103-150 Mean?**

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Public Law 103-150 also known as the Apology Bill is a law passed by the U.S. Congress which 1) acknowledges the wrongs committed by the United States at the time of the overthrow of the Hawaiian Kingdom and which 2) acknowledges the ramifications of the illegal overthrow. "Reconciliation" is a process whereby parties with a disagreement resolve the problem and return to friendly relations. Usually this involves repairing the injury or wrong done, and providing reparations and restitution to the injured party.

In November, representatives of the U.S. Department of Interior and Department of Justice will be in Hawaii to conduct an informational hearing on "Reconciliation" under Pub. L. 103-150. In order to participate meaningfully, it's important that Hawaiians understand the limitations of "Reconciliation" and the clear relationship between Reconciliation and reparation and restitution.

While the Apology Law doesn't define the process of "Reconciliation," the law does set forth certain facts, and it does identify claims for injury against the Hawaiian people.

**"Reconciliation:" Pub. L. 103-150**

1. Sec. 3. The Apology Bill does not settle claims against the U.S.
  
2. The Apology Bill does acknowledge the following primary wrongs/injuries committed by the U.S. against Hawaiian people:
  - a. Deprivation of Hawaiian rights to sovereignty, i.e., to have their own sovereign nation;

**Analysis**

"Reconciliation" may propose a process for settlement of claims, but changing the political status of Hawaiians or creating a Hawaiian Nation will have to be done by a Congressional Act.

Repairing the injury means that Hawaiians should have the right to a process to restore their own sovereign nation. Note: Law says native peoples rights were lost. Non-natives are not included in the Apology Law, so they should not participate in a vote to restore the nation.

"Reconciliation:" Pub. L. 103-150

b. Loss of 1.8 million acres of ceded lands without consent or compensation to the Hawaiian peoples;

c. Deprivation of the rights of Native Hawaiians to self-determination;

d. Violations of international law occurred at the time of the overthrow when the treaties between the U.S. and Hawaii was violated.

e. The Congress urges the President to acknowledge the "ramifications of the overthrow" and support Reconciliation.

Analysis

b. Repairing the injury means that that the ceded lands should be returned either/or compensation paid for lost 5(f) lands. This will require an inventory of the 5(f) trust and a division of the trust lands.

c. Restoring the right of self-determination to the native Peoples means that a process must be implemented that allows the Hawaiian peoples to choose their political status (i.e., Kingdom, monarchy, nation-within-a-nation). This is based on the definition of self-determination in the ICC, PRTS.

d. International treaty violations should be addressed in the international arena. These claims should be reserved.

e. The President should clarify and solidify reconciliation efforts by:  
1) signing an Executive Order which establishes and affirms the U.S. trust obligation to Hawaiians and which 2) lays the foundation for future federal agency (i.e., Interior, Justice, HUD, Health, Education etc.) relationship with Hawaiians – on a nation-to-nation basis.

## II. Ramifications: Negative Impacts of policy

### Wrongs identified in Pub. L. 103-150

1. Health and well-being of native peoples suffered because of their separation from the land:

### Analysis

Dan Inouye have provided millions of federal dollars to service agencies and non-profits to administer for Hawaiians and the power brokers who maintain wardship.

They want the U.S. to agree to keep the pork barrel flowing to the same people. This is wrong. Any Congressional law or Reparations should clearly state that the Native Nation will negotiate and administer federal/state funds. Restore the nation first.

2. Economic and Social changes  
Devastated the population of natives.  
Cultural traditions, identity and ancestral lands were lost.

Economic and Social issues are the jurisdiction of the peoples. Self-determination is the right of all peoples to determine their political status and by virtue of that right their economic, social & cultural development. Economic and social progress and decisions shall be under the native nation.

## III. Considerations

### Limitations of "Reconciliation" under Pub. L. 103-150.

1. "Reconciliation" is not defined in Pub. L. 103-150. Whatever it becomes will depend on who participates and what the outcome is. The reconciliation hearings are an opportunity to have Hawaiians come forth with what they believe Reconciliation is and what Reparations is.
2. The US Dept. of Justice and Interior cannot change the political status of Hawaiians, only the US Congress can. International law says that self-determination means that the peoples determine their political status. This means that DOJ, DOI and the US Congress should acknowledge in a congressional law that a self-determined vote on political status should be held in Hawaii for native Hawaiians.
3. Return of land is critical to the idea of Reconciliation. The native lands have not been inventoried or surveyed. The natural resources and submerged lands of the 5(f) trust (i.e., water, energy, coral) have not been inventoried or segregated. The US in its briefs in the Rice Case acknowledged a trust obligation to the native peoples. Section 5(f) provides the US shall sue the State on issues relating to the Ceded Lands. The US is at fault because it created a trust, never inventoried it and then dumped it on the State. Inventory and segregation of the 5(f) trust could be accomplished through Federal/OHA vs State litigation or a mutual agreement in a Congressional Act whereby State, US and the Native Nation conduct a joint inventory and agree to segregate the assets.

**IV. The US Apology Law and the Process of  
Self-Determination  
By Trustee Mililani Trask**

## The U.S. Apology Law and The Process of Self-Determination

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Since the US Congress passed the Apology Law in 1993 acknowledging that the illegal overthrow of the Hawaiian Nation by the US in 1893 deprived the indigenous Hawaiian peoples of our right to “self-determination.” Hawaiians have been considering and discussing how a native nation could be restored through a fair and inclusive self-determined process. This paper explores what “self-determination” is and how it can become a political reality for Hawaiians.

### I. What is “self-determination.”

“Self-determination” is a term defined in the International Covenant on Civil & Political Rights (ICCPR). The ICCPR states:

**“All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”**

This means that:

1. Self-determination is a human right. Some legal rights are rights that are recognized as national or state rights, some legal rights are recognized as corporate rights. Self-determination is not a right of the state of Hawaii or the USA or corporation, but it is a right that belongs to human beings.
2. Self-determination is a collective right. The international legal definition says that “peoples” have the right of self-determination. Individual people have individual rights – however, peoples rights go to collective groups of human beings. If we apply this to the Hawaiian situation this means that Hawaiians as a group have the right to determine their political status. Because of the overthrow of the Kingdom, Hawaiians lost our status as citizens of the Hawaiian Nation. As the result of annexation and statehood, Hawaiians were made to be wards or beneficiaries of the State and the United States. If Hawaiians are to be given their right of “self-determination” as part of the Reconciliation process under the Apology Law, then there must be a process which empowers Hawaiians to determine their political status.
3. To summarize, “Self-determination” is a collective human right which Hawaiians exercise through a process which allows them first to choose their political status, and then to use their political status to “freely pursue their economic, social and cultural development.”

### II. What is the self-determination process.

Self-determination procedures are two-step process because the primary right is the right to determine political status i.e., the right to choose and create a political entity or nation. Once this has been fulfilled, the political entity which represents the peoples can then

pursue and implement programs for the economic, social and cultural development of the peoples as their political representatives.

III. What would a "self-determination" process for Hawaiians look like and how would it be implemented?

A. Step One: The Political Status Ballot.

The first step is not the election of delegates to a constitutional convention. Before a constitution can be drafted to create a nation – the Hawaiian peoples must be given the right to choose their own political status and to choose the form of government for their nation.

A self-determination ballot is a vote whereby the Hawaiian peoples must be given several options from which to choose their political status and nationhood. These options come from the Hawaiian community as well as international law.

A1. Hawaiian community options include: 1) traditional ali'i; 2) monarchical (Kamehameha bloodlines); 3) Kingdom (with council of chiefs); 4) Nation within a Nation (similar to American Indians autonomy). Note: Other specific options can also be placed on the ballot (i.e., a monarchy under the Kawanakoas or Ka Lahui Hawaii).

A2. International Options include: 1) Free Association; 2) a separate system of government and 3) Independence and 4) Incorporation which is statehood and the status quo. These international options arise from international law through Resolution 742 Nov. 27, 1953 Fourth Committee of the UN General Assembly. Note: Independence should be presented on a separate ballot because it is not a government structure, but it relates to the relationship between the US and the newly-created nation. Each Hawaiian voter should be allowed to cast one vote for the government structure they endorse and each Hawaiian voter should also be allowed to vote their opinion on the issue of Independence.

The first step to a self-determination process is allowing the Hawaiian peoples to vote for the above options. In addition, Hawaiians could be given the option to vote for or against certain powers of their nation. For example, Hawaiians could be asked whether their nation should have the power to print money, control land, create courts of justice etc.

The results of the political status ballot will tell Hawaiians what political status and form of government Hawaiians want so that their political will can be implemented in step two – the sovereignty ballot.

Question: What happens if the Hawaiians vote in Step One but there is no clear majority position?

Answer: This is okay because in Step Two, the Sovereignty Ballot – many choices can be accommodated. See Section B3(i) hereinafter.

B. Step Two: The Sovereignty Ballot.

Step Two is the implementation of the political will of the people. It involves the election of delegates who represent 1) the peoples political will and 2) the peoples

community. Step Two is the selection of the representatives of the peoples who will actually create the government and write the constitution of the new nation. Representatives and delegates chosen in Step Two are limited in their power -- they can only do what the people have empowered them to do in Step One. Example: If 75% of the Hawaiians vote for the Monarchy to be restored, than the delegates to the constitutional convention must create constitutional monarchy.

Representatives and delegates are not given free rein to do whatever they want. If they had this freedom, they would not be implementing the self-determined will and choice of the peoples who chose them. Representatives/delegates must be accountable to the peoples.

#### B.1 Apportioning Delegates/Representatives.

Representatives of the people to a constitutional convention are chosen based on two criteria. This occurs because the people have the right to have representatives from their communities, and they also have the right to have their political will represented.

#### B.2 Delegates who Represent the Peoples Communities.

County, State and Federal elections are based on districts. Representatives are chosen based on population within their district. These are land-based delegates who must live in the district from which they are elected and they must be elected by peoples within the district. This is a function of Rulemakings. See Section C herein.

Example: The rules (see Rulemaking Section C ) provide that there will be 170 delegates to the Hawaiian Convention and that 100 will be chosen from the community/land-base and 70 will be chosen based on the political ballot.

The land base is divided into districts based on criterion including population, a common history, and a community of interest. Candidates run because they reside in the district. There are 200,000 Hawaiians in Hawaii. If 100 delegates are elected by population then each represents 2,000 Hawaiians. If Honolulu has 100,000 people -- than Honolulu Hawaiians elect 50 delegates. If Kailua has 10,000 Hawaiians than Kailua Hawaiians elect five delegates.

Question: What about small communities who don't have enough Hawaiians to elect even one representative? Some Hawaiian communities are so small they don't have enough peoples to even qualify for one delegate. If these communities were lumped into another district, their unique Hawaiians perspective would never be represented.

Answer: Exceptions should be made for "insular communities."

Example: Milolii and Kalapana. Milolii and Kalapana are unique fishing communities. Neither have 2,000 people. If Milolii and Kalapana are lumped into Kona, their delegate would never be elected because the Kona population would eradicate and consume their small vote count. In this case --- rule making can provide for criterion to be established for "insular communities" who are uniquely Hawaiian and who should get at least one delegate. This will increase the land-based delegates to 100 plus the number of insular communities. Note: Exceptions can and should be made for insular communities because



these Hawaiians continue rural and traditional values and practices and because they have a common history. If only large urban representatives participate, than only the values and practices of urban areas will be represented. The key in self-determination processes is to be truly representative of the peoples--- all of them.

B.3 Delegates who represent the political will of the peoples as reflected in the political status ballot.

Under the example in Section B.2(i) there would be 100+ delegates from the community/land-base and 70 who represent the political will of the peoples. How would 70 be elected? The 70 are not elected based on districts or population. The 70 are elected at large. They are chosen based on their political commitment to the options on the political status ballot.

Example: When the political status ballot was voted on 10% of Hawaiians wanted a Monarchy, 30% wanted a traditional government, 40% wanted a nation within a nation and 20% wanted free association. This means that seven out of 70 or 10% of the delegates would be elected from an at-large monarchial slate, 14 from a free association slate, 21 from a traditional slate and 28 from nation within a nation slate. Rulemaking (Section C ) will determine what a viable percentage would be or whether all options should be accommodated.

### C. Rulemaking and Logistics

C1. Rulemaking: Rulemaking sets up the criterion for districting, insular communities, guidelines for special initiatives to be on the ballot, time frame for challenges, logistics and the actual conducting of the Political Status ballot and the Sovereignty Ballot. The primary goal in rulemaking is to be inclusive while being practical.

C2. Logistics: Some collective group or steering committee needs to be identified to initiate and oversee the self-determination two-step process. The right of self-determination requires that the persons be selected from the group of "peoples" whose rights of self-determination are at issue. In addition, there is always the need to have unbiased observers to the process to insure its integrity. In the case of Hawaii, an international observer team would also be appropriate. The steering committee may be elected to their positions by Hawaiians or a collective group could be formed through consensus. Non-natives may also be included in the Steering Committee, however, their numbers should not exceed those of the natives.